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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 26, 2013

3:06 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Conference, on the Record, Regarding Discovery and Post-Trial
Briefing

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right. This is Judge Glenn. We're on
3 the record in Residential Capital number 12-12020. I have
4 the -- let's see, who's on the telephone? I'm not sure if I
5 have the list or not.

6 MR. KERR: Your Honor, it's Charles Kerr of Morrison &
7 Foerster on behalf of the debtors.

8 THE COURT: Okay.

9 MR. O'NEILL: Brad O'Neill and Stephen Zide on behalf
10 of the committee, Your Honor, from Kramer Levin.

11 THE COURT: Okay.

12 MS. FOUDY: Theresa Foudy from Curtis Mallet is on as
13 well.

14 MR. UZZI: And Gerard Uzzi and David Cohen from
15 Milbank, on behalf of UMB Bank and the JSNs.

16 THE COURT: Okay. Who wants to begin.

17 First tell me, are there any disputes about the
18 additional exhibits?

19 MR. KERR: Your Honor, it's Charles Kerr on behalf of
20 the debtors. I think we have resolved all of our disputes, or
21 any disputes that may have arisen with respect to the exhibits.
22 So I believe that the JSNs just filed a list of the additional
23 exhibits that they are offering as part of their case, which we
24 have looked at and have agreed to.

25 THE COURT: Okay.

1 MR. COHEN: Your Honor, this is David Cohen. It's at
2 docket 5956, and we vetted that list through both the committee
3 and the debtors, and all objections have been resolved.

4 THE COURT: Thank you, I appreciate the fact that you
5 worked that out.

6 MR. KERR: Your Honor, this is Charles Kerr --

7 THE COURT: Okay, just hold on, Mr. Kerr. Just to be
8 clear, then, so that all of the exhibits listed -- how many are
9 on there, by the way? Mr. Cohen?

10 MR. COHEN: I think there are 185, Your Honor.

11 THE COURT: Great. Just what I wanted to read is
12 another 185 exhibits. But so the exhibits listed on what's
13 been filed as ECF docket number 5956 are in evidence.
14 (Exhibits listed at ECF 5956 were hereby received into evidence
15 as Defendants' Exhibits, as of this date.)

16 MR. COHEN: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. KERR: Your Honor, Charles Kerr on behalf of the
19 debtors. The only remaining issue with respect to exhibits was
20 one that arose during Ms. Gutzeit's examination I think, last
21 Friday. There were three exhibits, AFC accounting principles,
22 that we had put in and that were excerpts from those. And you
23 had asked whether or not in light of the questions you had
24 raised with Ms. Gutzeit, there were any additional portions of
25 those AFC standards that we needed to put in. And I have been

1 trying to track that down. I apologize, but I have not gotten
2 a final answer.

3 I think what you had suggested at the time was, if we
4 could agree with the JSNs we would just substitute the number
5 of pages for what's in there. But I just wanted to let you
6 know that that has not yet been completed.

7 THE COURT: Okay. I don't -- Mr. Cohen? I mean, you
8 want to address that?

9 MR. COHEN: Yeah, Your Honor. This is David Cohen.
10 That would be fine with us. I understand that sometimes
11 finding the complete statement of those principles may take a
12 little effort. So we're fine waiting.

13 MR. KERR: Right. And Your Honor, I will get that
14 resolved by Monday, and I'll resolve Mr. Cohen -- I mean, by
15 tomorrow, and that will not be an issue. So I just wanted to
16 let you know --

17 THE COURT: Okay.

18 MR. KERR: -- that that's --

19 THE COURT: I thought you actually were going to work
20 on Thanksgiving Day to read the entire statement of accounting
21 principles and decide which --

22 MR. KERR: I'd actually ask my children to do that,
23 Your Honor. So --

24 THE COURT: I don't think too much is going to ride on
25 this. I mean, I -- again, I said it from the bench that I

1 think that the excerpts may suffice. If they don't -- if you
2 can't agree you'll just put the whole thing in. But --

3 MR. KERR: Right, Your Honor. And this is Charles
4 Kerr again. The excerpts may suffice. And I'm hoping they
5 will. I just need to confirm that.

6 THE COURT: No, I -- that's fine. Either way, we know
7 what's -- at worst the whole things are coming -- both of them
8 are coming in in their entirety or the excerpts. And if people
9 want additional excerpts to add, that's fine.

10 Okay, I'm comfortable with that.

11 MR. COHEN: Okay.

12 THE COURT: All right.

13 MR. KERR: Your Honor, this is Charles Kerr. I had
14 one other housekeeping matter and then we have, I think,
15 another issue to deal with you. But one housekeeping matter.

16 Your Honor, I understand at the end of phase 2 -- I
17 mean phase 1 when -- and I don't know if both parties -- at
18 least I think the committee and the debtors, when they
19 submitted their post-trial findings of fact and conclusions of
20 law, I understand they gave you also a DVD so you could
21 hyperlink to the exact cases and exhibits. And I don't know
22 whether that was useful for Your Honor or not, whether it
23 was -- I understand it's somewhat expensive to do, but if it
24 was helpful for Your Honor, we could do that again. And I was
25 just asking to see whether that was something that you'd be

1 interested in having us do?

2 THE COURT: It is helpful, Mr. Kerr. I'm mindful of
3 what the expense is in this case, but compared to everything
4 else that's being expended, providing me with a hyperlinked DVD
5 is not inordinate. And I think -- I understand all of the
6 parties want a fairly prompt resolution. We'll see how prompt
7 that's going to be, but --

8 MR. KERR: That's fine, Your Honor. We'd be more than
9 pleased to do it.

10 THE COURT: Okay. It is helpful.

11 MR. COHEN: Your Honor, this is David Cohen, also, on
12 behalf of the JSNs. We'd be happy to provide one with you
13 also. What we would suggest we do is submit the brief on the
14 5th when it's due, and then shortly thereafter send you the
15 hyperlinks.

16 THE COURT: That's fine, Mr. Cohen. And Mr. Kerr,
17 same applies to you.

18 MR. KERR: Thanks.

19 THE COURT: I mean, the sooner you get -- look, I
20 mean, I'm working on this already, but I really need the facts
21 and your briefs. But so, it's important. But so yes, file the
22 briefs and as quickly as you can thereafter, provide us with
23 the hyperlinked DVDs.

24 MR. COHEN: We'll do that, Your Honor.

25 THE COURT: Okay.

1 MR. COHEN: We'll do that.

2 MR. KERR: Your Honor, again, Charles Kerr. I think
3 there was -- and while we've been successful in resolving the
4 exhibit issues-- and I think there was one other issue that we
5 discussed on the phone today with the JSNs. And I think the
6 parties are of like mind about how to address the issues, but
7 we just wanted to raise it with Your Honor and make sure it met
8 Your Honor's expectations as part of the post-trial findings or
9 actually what would be in the briefs.

10 And actually what I -- if I could turn this over to
11 maybe Brad O'Neill or -- who might be able to articulate the
12 issue for you. It has to do with the fee requests.

13 Brad, could you maybe outline it for the judge?

14 MR. O'NEILL: Your Honor, as you know, at the sort of
15 back end of the issues here, there are issues relating to fees
16 and the compensability of the JSNs' fees.

17 THE COURT: Yeah, they said they want another sixty
18 million dollars.

19 MR. O'NEILL: Yeah, that's the number that's been
20 bandied about. But it breaks down into -- and I think the
21 parties are in agreement on this. It breaks down, in our view,
22 into legal issues and factual issues. And I think the parties'
23 preference, which I think is consistent with your expectations,
24 is to the extent there are factual issues relating to the
25 allowability of a fee request, they would be back-ended and put

1 and heard in a separate proceeding, but that to the extent
2 there are legal issues -- and we believe there are legal issues
3 concerning the JSNs' entitlement to fees -- we would brief them
4 now as part of phase 2.

5 And we just wanted to make sure before we went ahead
6 and did that, that that was consistent with what you were
7 thinking.

8 THE COURT: Mr. Uzzi, Mr. Cohen, do you want to
9 address that?

10 MR. UZZI: Yes, Your Honor. Gerard Uzzi. No, that's
11 consistent with our understanding. I think there's a threshold
12 question with respect to what are the both statutory
13 contractual entitlements that we need to address, which I think
14 will be hopefully very easily addressed, and then there's the
15 factual issue which, just from a practical standpoint, I'm not
16 sure the issue's joined on it.

17 But even going a little bit into the more
18 practicality, I think there's -- a trustee will have to submit
19 a request alternately to the debtors, the issuer, under the
20 documents, and the issuer will have a chance to review it. As
21 I said in my opening, we don't disagree with the fact that it's
22 subject to a reasonableness standard. And we'll see if we have
23 a dispute.

24 If Your Honor otherwise rules that the JSNs are
25 entitled, or I should say, the trustee is entitled to

1 compensation, we'll see if we have a dispute on reasonableness,
2 and if we do, that hopefully will be a narrow issue for Your
3 Honor to deal with at a later time.

4 THE COURT: I agree with both sides. I mean, I didn't
5 expect that evidence was going to be offered on fees at the
6 trial. And obviously, if -- but I do anticipate resolving the
7 legal issue of entitlement. Obviously, if I decide that in
8 favor of the JSNs, if you can't resolve the issue, we'll have
9 to have another evidentiary hearing to resolve it. So I agree
10 with you.

11 But I do -- and I think you both seem to agree -- I
12 was expecting and I do expect to resolve the legal issue of the
13 entitlement.

14 MR. UZZI: Yes, Your Honor.

15 THE COURT: Mr. Kerr, anything else?

16 MR. KERR: Your Honor, Charles Kerr. I believe that
17 was the only issue. We just wanted to make sure that we were
18 on the same page with the Court. I don't believe there's any
19 other issues. I think we've been very successful in working
20 through the other housekeeping issues we had after yesterday.
21 So I think we're just --

22 THE COURT: Okay.

23 MR. KERR: -- working away.

24 THE COURT: All right, Mr. Uzzi or Mr. Cohen, do you
25 have anything you want to raise?

1 MR. COHEN: No, Your Honor. This is David Cohen. I
2 think that those were the only issues we had for the Court.
3 Thank you.

4 THE COURT: Okay. I do have one last thing I wanted
5 to order, and that is that all of you who are on the phone, you
6 are absolutely forbidden from having your associates work on
7 Thanksgiving.

8 MR. UZZI: Your Honor, on behalf of my associates, one
9 who's in the room with me right now, who is smiling from ear to
10 ear, we thank you for that.

11 THE COURT: And I would just say, if any of the
12 associates who hear about this who are on the phone, if any of
13 the partners in your firms violate that rule, you let me know.

14 MR. KERR: Your Honor, I have to countermand Mr. Lee's
15 orders then.

16 MR. UZZI: And, Your Honor, I'm not in a position to
17 order you, but I will say I hope your clerks at least have a
18 happy Thanksgiving as well.

19 THE COURT: We're all pleased that we're not getting
20 the briefing until after Thanksgiving. Let me put it that way.

21 UNIDENTIFIED SPEAKER: Okay, Your Honor.

22 THE COURT: Okay. So all right.

23 MR. KERR: Thank you, Your Honor. Have a wonderful
24 holiday.

25 THE COURT: Everybody have a very nice holiday. Okay.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 IN UNISON: Thank you, Your Honor.

2 THE COURT: Thanks very much. Okay.

3 (Whereupon these proceedings were concluded at 3:17 PM)

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I N D E X

E X H I B I T S

DEFENDANT'S	DESCRIPTION	PAGE
--	Exhibits listed at	7
	ECF 5956	

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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Date: November 27, 2013